

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RESOLUTE FOREST PRODUCTS, INC.,
et al.,

Plaintiffs,

v.

GREENPEACE INTERNATIONAL, et al.,

Defendants.

Case No. 17-cv-02824-JST (KAW)

**ORDER TERMINATING NON-
COMPLIANT DISCOVERY LETTER**

Re: Dkt. No. 423

On January 28, 2022, the parties filed a discovery letter regarding Plaintiffs' assertion of privilege as to certain documents. (Dkt. No. 423.) The Court **TERMINATES** the discovery letter for failure to comply with the undersigned's standing order and the Civil Local Rules.

First, the parties did not properly meet and confer as they met and conferred only by telephone on January 10, 2022. Per the undersigned's standing order, parties are required to "meet and confer **in person or by video conference**, if an in-person conference is not feasible, regarding the discovery dispute(s) in an effort to resolve these matter(s). (Meet and confers may only occur by telephone if it is impossible to meet in person or by video.)." (Judge Westmore Standing Order ¶ 13.) Further, the discovery letter must be filed "within five (5) days of the lead trial counsel's meet and confer session." (Judge Westmore Standing Order ¶ 14(a).)

Second, the discovery letter includes no fewer than 47 pages of exhibits, contrary to the undersigned's standing order. (*See* Judge Westmore Standing Order ¶ 14(b)(ii) ("The parties may only attach 12 pages of exhibit(s), which must be clearly marked and tabbed.")). One of the exhibits also appears to be in a font size that is frankly illegible.¹ (Dkt. No. 423-2.) The discovery

¹ Even at 152% zoom, the text is barely legible.

letter also includes exhibits that are not permitted by the undersigned's standing order. (*See* Judge Westmore Standing Order ¶ 14(b)(i) ("The joint letter . . . may not be accompanied by exhibits or affidavits other than exact copies of interrogatories, requests for production of documents and/or responses, privilege logs, and relevant deposition testimony.").)


Third, the discovery letter includes footnotes that fail to comply with Civil Local Rule 3-4(c), which requires that the font size of footnotes be "in 12 point type or larger." The parties have previously been warned that footnotes must be in 12-point standard font, and that the parties should request leave of Court if they require additional pages. (Dkt. No. 269 at 2 n.1.) The Court is also under no obligation to consider arguments made solely in footnotes. *See Riegels v. Comm'r (In re Estate of Saunders)*, 745 F.3d 953, 963 (9th Cir. 2014) ("Arguments raised only in footnotes . . . are generally deemed waived.").

The Court observes that this is not the first (nor even the second or third) time the Court has terminated the parties' discovery letter for failure to comply with these exact requirements. (*See* Dkt. Nos. 276 (terminating discovery letter for failure to comply with exhibit requirements), 324 (terminating discovery letter for failure to comply with meet and confer requirements), 380 (terminating discovery letter for failure to comply with exhibit requirements).) The Court has also repeatedly instructed the parties to file a request for additional pages *prior* to filing a non-compliant discovery letter. (*See* Dkt. No. 269 at 2 n.1, 276, 380, 397.)

Accordingly, the Court TERMINATES the discovery letter. Given the repeated flagrant disregard for the Court's requirements and Civil Local Rules, failure to comply with **all** requirements in the undersigned's standing order and Civil Local Rules **will** result in the summary termination of future discovery letters without further explanation.

IT IS SO ORDERED.

Dated: January 31, 2022


KANDIS A. WESTMORE
United States Magistrate Judge